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**MAY 14 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 14, 1993

**BY HAND**

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: MM Docket No. 92-266

Dear Ms. Searcy:

Please find enclosed, on behalf of the National Association of Telecommunications Officers and Advisors, et al., an original and nine copies of Opposition of Local Governments to the Stay Petition Filed By the National Cable Television Association, which is being filed pursuant to 47 C.F.R. § 1.45(d) in the Commission's proceeding in MM Docket No. 92-266.

Any questions regarding this submission should be referred to the undersigned.

Please stamp the additional enclosed copy of this document and return to my messenger. Thank you.

Sincerely yours,



Patrick J. Grant

Enclosures

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MAY 14 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Implementation of Sections of  
the Cable Television Consumer  
Protection and Competition  
Act of 1992

Rate Regulation

MM Docket No. 92-266

TO: The Commission

OPPOSITION OF LOCAL GOVERNMENTS TO THE STAY PETITION  
FILED BY THE NATIONAL CABLE TELEVISION ASSOCIATION

The National Association of Telecommunications  
Officers and Advisors, the National League of Cities,  
the United States Conference of Mayors, and the National  
Association of Counties (collectively, the "Local Gov-  
ernments"), pursuant to 47 C.F.R. § 1.45(d), hereby op-  
pose the Petition for Limited Stay of Effective Date  
submitted by the National Cable Television Association,  
Inc. on May 7, 1993 ("NCTA Petition").<sup>1</sup>

<sup>1</sup> As of this writing, comments and a separate petition  
in support of the NCTA Petition have been filed on be-  
half of a number of cable operators. See Comments filed  
by Wiley, Rein & Fielding on May 11, 1993 and Petition  
filed by Dow, Lohnes & Albertson on May 12, 1993. This  
Opposition of Local Governments is also directed at  
those Comments and Petition.

### DISCUSSION

#### 1. The Commission Should Deny the Stay Request

As the NCTA recognizes, the main purpose of the Commission's rate freeze order was to alleviate the Commission's concern that:

during the period between the adoption of our rules and the date that a local franchising authority can establish regulation of the basic service tier rates, and that consumers can file complaints with the Commission concerning potentially unreasonable rates for cable programming services, cable operators could raise rates, effectively undermining the statutory purpose of reasonable rates pending implementation of our rules.

Order, 58 Fed. Reg. 17530 (Apr. 5, 1993). See NCTA Petition at 2. NCTA's request that the effective date of the rules coincide with the end of the rate freeze is inconsistent with this purpose and would undermine the benefit of the rate freeze.

Under the Commission's new rules, franchising authorities may not begin filing certifications until 30 days after the Report and Order in this proceeding is published in the Federal Register. Assuming the rules appear in the Federal Register on May 22, 1993, franchising authorities may not begin filing certifications until June 21, 1993, the current effective date of the Commission's rules. If the effective date is moved to August 3, 1993, however, then franchising authorities

filing certifications. Thus, even those certification requests which were filed on the first possible date would not become effective until September 2, 1993.

If the effective date of new rules was extended to August 3, a cable operator's rates would not be subject to regulation until it received the required notification from the franchising authority that it has the right to regulate basic rates, which could occur no earlier than September 2, 1993 -- or approximately one month after the rate freeze is scheduled to expire.

Therefore. from August 3. 1993 until September 2. 1993

Such increases are especially unfair to subscribers that may currently be receiving cable service at a rate below the benchmark rate, but may no longer receive such a rate if the cable operator raises the rate after August 3. Under the new rules, once a cable operator raises its rate above the benchmark rate, a franchising authority may reduce such a rate to the benchmark rate, but may not order the cable operator to reduce the rate to the rate the operator charged prior to expiration of the rate freeze. See 47 C.F.R. § 76.922(b)(1)(iii) (to be codified).

**2. The Rate Freeze Must Be  
Extended if There Is Any Change  
in the Effective Date of the New Rules**

While Local Governments strongly oppose any stay of the effective date of the new rate regulation rules, if the Commission decides to grant such a stay in order to give cable operators additional time to make the necessary rate adjustments permitted by the freeze order, then the Commission also must extend the freeze period.

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[Footnote continued from previous page]  
§ 76.922(b)(2) (to be codified). Hence, franchising authorities whose certifications become effective on July 21, and that have adopted the local regulations required by the Commission's rules, will have less than two weeks to provide such notification to cable operators in order to ensure that rates subject to the rate freeze, rather than unfair rates an operator may impose after August 3, become the rates subject to regulation on the "initial date of regulation" under the Commission's rules.

As the Commission correctly recognized when it adopted the freeze order, there must be a sufficient time period from the effective date of the new rules during which "a local franchising authority can establish regulation of the basic service tier rates" without cable operators "effectively undermining the statutory purpose of reasonable rates" by imposing unreasonable rates during the interim. If August 3 becomes the effective date, Local Governments believe that the Commission should extend the freeze by an additional 120 days in order to prevent cable operators from raising rates during the period imposed by the Commission's rules between the filing of a certification request and the date by which a franchising authority can notify a cable operator of its right to regulate rates.

require notice of rate increases. Furthermore, in those instances where a cable operator may need to raise the rates on a basic tier and decrease the rates on another tier in order to bring a system into compliance with the rates mandated by the Commission's rules, the cable operator need simply request that the franchising authority waive the local notice requirement in light of the rate adjustments mandated by the Commission's rules. The Commission need not undertake the drastic measure of preemption in order for cable operators' concerns to be alleviated; local franchising authorities can address potential problems in those few franchise areas where notice or other requirements may raise concerns.

#### CONCLUSION

For the foregoing reasons, Local Governments request that the Commission deny NCTA's request for a stay of the effective date of the Commission's rate regulations and for preemption of local rate notice requirements. If the Commission grants the request for a stay of the effective date, Local Governments strongly urge the Commission to extend the rate freeze by 120

days to protect cable subscribers from unreasonable rate increases.

Respectfully Submitted,



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Norman M. Sinel  
Patrick J. Grant  
William E. Cook, Jr.

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Counsel for the Local Govern-  
ments

May 14, 1993



**CERTIFICATE OF SERVICE**

I, Patrick J. Grant, a member of the firm of Arnold & Porter, hereby certify that on May 14, 1993, a copy of the foregoing OPPOSITION OF LOCAL GOVERNMENTS TO THE STAY PETITION FILED BY THE NATIONAL CABLE TELEVISION ASSOCIATION was served by first-class United States mail, postage prepaid, upon:

David L. Brenner, Esquire  
National Cable Television Association  
1724 Massachusetts Avenue, N.W.  
Washington, D.C. 20036

John I. Davis, Esquire  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Peter H. Feinberg, Esq.  
Dow, Lohnes & Albertson  
1225 - 23d Street, N.W.  
Washington, D.C. 20037

  
\_\_\_\_\_  
Patrick J. Grant